

REMARKS/ARGUMENTS

Favorable reconsideration of this application, as presently amended and in light of the following discussion, is respectfully requested.

Claims 37, 39-44, 48, 50, 51, and 53 are pending in the present application, Claims 37, 39-44, 48, 50, 51, and 53 having been amended, Claims 38, 45-47, 49, 52, and 54-72 having been canceled without prejudice or disclaimer, and Claims 48 and 50 having been withdrawn. Support for the present amendment is found, for example, in the elected Figs. 1 and 2. Applicants respectfully submit that no new matter is added.

In the outstanding Office Action, Claims 37, 38, 49, and 54 were rejected under 35 U.S.C. §102(b) as anticipated by Friedlaender et al. (U.S. Patent No. 4,526,681, hereinafter Friedlaender); and Claims 37-45, 49, 51, 53, and 54 were rejected under 35 U.S.C. §103(a) as unpatentable over Colin et al. (U.S. Patent No. 5,925,573, hereinafter Colin).

Initially it is noted that Friedlaender is not cited on PTO Form 892. Applicants respectfully request that Friedlaender be cited on PTO Form 892, and a copy of which be provided in the next Office communication.

Applicants respectfully submit that amended Claim 37 patentably distinguishes over Friedlaender. Amended Claim 37 recites, *inter alia*.

attracting, with a first magnetic mechanism, the magnetic particles fixed to the analyte to a bottom of the first receptacle and forming an initial residue at the bottom of the first receptacle; and

after forming the initial residue at the bottom of the first receptacle, dividing the initial residue into a plurality of residues by transporting the initial residue through channels connecting the first receptacle to the second receptacles.

Friedlaender does not disclose or suggest at least this element of Claim 37.

Initially, it is noted that Claim 37 is directed toward a method for dividing an analyte. Friedlaender, on the contrary, describes a method of magnetically separating particles. Friedlaender is not about the division of an analyte.

Friedlaender describes a magnetic separation method utilizing a colloid of magnetic particles. Gravity is used to bring the particles to the bottom 16 of container 12. The function of the magnetic field, which is applied along container 18, is not to settle the particles to the bottom of the first receptacle. Rather, this magnetic field separates the particles according to their magnetic susceptibility. In other words, the function of the magnetic field in Friedlaender is different from the claimed “attracting, with a first magnetic mechanism, the magnetic particles fixed to the analyte to a bottom of the first receptacle and forming an initial residue at the bottom of the first receptacle.” In Fiedlaender, the sedimentation of the magnetic particles is only achieved through gravity towards the collection reservoir 16, which are distinct from the first container 12.¹

In view of the above-noted distinctions, Applicants respectfully submit that Claim 37 (and any claims dependent thereon) patentably distinguish over Friedlaender.

Applicants respectfully submit that amended Claim 37 patentably distinguishes over Colin. Colin describes a method that uses a magnetic field for agglomeration and displacement of metal complexes which are the result of the incubation of a liquid sample with a reactant including metal particles. In the embodiment shown in Colin’s Fig. 3, there is a well 15 for receiving a sample. At this stage, the magnetic reagent is not added. The magnetic reagent is added at incubation wells 16.² Thus, the first well is only adapted to receive the liquid sample. The fluid division is made upstream with respect to well 15. The magnetic elements 3 in Colin are used to transfer the intermediate complexes in second wells

¹ Friedlaender, col 5, lines 19-22.

² Colin, col. 3, lines 36-43, and col. 10, lines 15-20.

16a-16j towards reading wells 17.³ There is no disclosure that magnetic elements 3 are used to attract the magnetic particles fixed to the analyte to a bottom of the first receptacle and to form an initial residue at the bottom of the first receptacle.

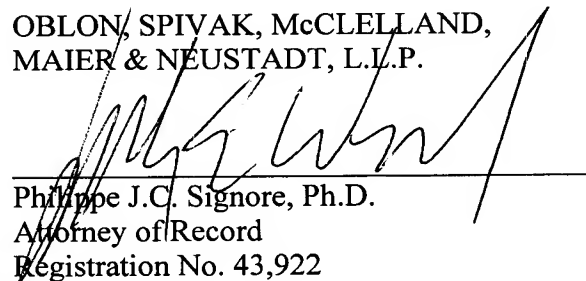
Colin describes a dividing which is only fluidic. After the magnetic field from element 3 is applied, there is no division of the material in wells 16. Thus, there is no "after forming the initial residue at the bottom of the first receptacle, dividing the initial residue into a plurality of residues by transporting the initial residue through channels connecting the first receptacle to the second receptacles."

In view of the above-noted distinctions, Applicants respectfully submit that Claim 37 (and any claims dependent thereon) patentably distinguish over Colin.

Consequently, in light of the above discussion and in view of the present amendment, the present application is believed to be in condition for allowance and an early and favorable action to that effect is respectfully requested.

Respectfully submitted,

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³ Colin, col. 10, lines 20-30.